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New Colorado treasurer questions legality of tobacco settlement

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DENVER (AP) -- Less than four months after taking office, acting State Treasurer Mark Hillman is making waves by suggesting a 46-state tobacco settlement is illegal, even though it provides Colorado with millions of dollars a year.

Hillman wrote a column for the Wall Street Journal arguing that the settlement, negotiated among state attorneys general and big tobacco companies, was unconstitutional because it set up a system to collect taxes without legislative authority.

"The billions generated by the tobacco settlement conceal the threat that activist attorneys general pose to taxpayers and to checks and balances on political power," Hillman wrote in the column, published last week.

Since 1998, Colorado has collected \$572 million under the settlement, including \$87 million this year, according to legislative officials.

Hillman told The Associated Press Tuesday he is not suggesting the state give the money back, but

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that he agreed with a lawsuit filed in New Orleans federal court last month claiming the agreement was illegal.

"I think what they can do is take the Master Settlement Agreement to Congress and have Congress decide if they want to approve it. As long as the money is being collected, we'd be stupid not to keep it," said Hillman, who was named acting treasurer in June after then-treasurer Mike Coffman said he was returning to active duty with the Marines in Iraq.

The settlement requires major tobacco companies to pay \$206 billion to the 46 participating states. In return, the states dropped lawsuits seeking health cost reimbursement from the companies.

Colorado has used its share for Medicaid and other programs.

The lawsuit, filed Aug. 2, by the nonprofit Competitive Enterprise Institute, argues that the legal settlement created a government-protected cartel that keeps cigarette prices artificially high. It asks that states be prevented from enforcing it.

Similar lawsuits have been filed in Oklahoma, New York, Kentucky, Tennessee and Arkansas.

Senate President Joan Fitz-Gerald, D-Golden, said Colorado joined the settlement to help cover the high cost of providing medical treatment for smoking-related illnesses, and to set up tobacco cessation and prevention programs. She said losing that money would be a blow to the state.

"I can't count the number of services we rely on from the tobacco settlement. I can't imagine Mark Hillman aligning himself with big tobacco," Fitz-Gerald said.

Hillman said the issue is not "whether the Master Settlement Agreement is good policy or whether tobacco companies are scoundrels."

"The larger issue is whether attorneys general can rightfully evolve into a law unto themselves, usurping the constitutional roles of state legislators, governors, and even Congress," he said.

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